

The defense of a debtor in execution proceedings

Abstract

The thesis focuses on the defense of a debtor in execution proceedings. It is divided into theoretical and practical part and composes of six chapters. The thesis is based on specialized literature, professional newspaper articles, Czech courts case law and historical and current legislation.

The goal of this thesis is to provide theoretical explanation of selected legal means of the defense given to a debtor in execution proceeding and to subject them to considerations and criticism. Therefore, each part of the thesis doesn't lack considerations of sufficiency or insufficiency of the legislation in relation to the debtor or reflections over the possibilities how to abuse the legal means of defense in execution proceeding by a debtor.

The first chapter is devoted to the historical excursion focusing on the execution law with an emphasis on the possibilities of the defense of the debtor against execution. The excursion starts in the Roman era, continues through the medieval and modern execution law and ends with significant milestones in the execution law in the Czech Republic.

The second chapter defines the participants of the execution proceedings, because only participants of the execution proceedings are those subject to the legal means of the defense against execution.

The third chapter outlines the difference between the means of the defense and the means of the protection of a debtor in terms of their manifestation in current legislation. The means of protections of a debtor are represented by individual principles of the execution proceedings. For this reason the third chapter is mostly devoted to these principles.

The fourth and the fifth chapter of the thesis, representing the most extensive part of this thesis, is devoted to the selected legal means of the defense given to a debtor in the execution proceedings. It is divided into two parts. First part focuses on the procedural defense of the debtor in the execution proceedings while second part focuses on the defense of the debtor against errors of the enforcement person.

The practical part of the thesis represents chapter six. In this chapter I demonstrate the possibilities of abusing the legal means of the defense by a debtor to make obstructions in the execution proceedings and to delay the performance of the execution. The chapter is based on the real case in which the debtor due to his obstructions postponed performance of the execution on real estate by almost eight years. In this chapter, I respond to abusing of the legal means of the defence in execution proceedings by considering changes in the legislation.

The thesis tries not only to provide an overview of the debtor's legal means of the defense, but also tries to subject the current legislation to criticism, because as demonstrated in the chapter six, the creditor's claim may become practically unenforceable considering the possibilities of the legal means of the defense which can be easily abused.